(7)

No. 89-1958

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

COLOWYO COAL COMPANY,
PEABODY COAL COMPANY, *et al.*,

Petitioners,

v.

MANUEL LUJAN, JR.,
SECRETARY OF THE INTERIOR,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI

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In response to the brief in opposition, petitioners respectfully submit the following reply.

First, the Secretary's formulation of the "Questions Presented" does not fairly represent the issues before the Court. Resp. Br. at I. The Secretary's articulation is silent on two issues raised by the petition and tortures two others. Compare Resp. Br. at I with Pet. at i. The four questions identified in the petition clearly present grounds for granting certiorari. Pet. at i.

Second, the Secretary does not dispute the practical effect of the decision below.[1] Resp. Br. at 7. The Court of Appeals holding that every federal contract deemed ambiguous must be interpreted as reserving in Congress the unrestricted power to change contract terms in the exercise of its "sovereignty" has the effect of making federal contracts binding on private parties while leaving the government free to modify contracts at will through Congressional action. Pet. at 10-11. The issue in this case is whether federal contracts grant vested rights in private parties or whether, as the Secretary contends, Congress can alter those rights whenever it wishes, without fear of encroaching on property rights. It is not about proper application of one of dozens of rules of construction.

Third, the Secretary suggests that he need not be concerned with construing the reciprocal sections of the Mineral Leasing Act that grant federal coal lessees

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1 The Secretary discusses at length the issue of whether the Court of Appeals established a new principle of federal contract law or merely applied *Bowen v. Public Agencies Opposed to Social Security Entrapment*, 477 U.S. 41 (1986). It is the effect of the decision, however characterized, that impacts petitioners, and the Secretary does not deny that effect.

indeterminate leases and reserve in the federal government the power to readjust those leases because the former is without content and the latter is without limitation. Resp. Br. at 7. Neither contention stands. The Mineral Leasing Act vested federal coal lessees with unique indeterminate lease rights because Congress believed such grants were necessary to provide lessees with long-term security, given the inherent risk and capital-intensive character of the coal mining industry. *See*, *e.g.*, Pet. at 4-6; 51 Cong. Rec. 1495 (1914). However, because indeterminate leases could remain outstanding for scores of years and because the relative positions of the federal government and lessees would likely change over that time, the Mineral Leasing Act also provided that the federal government could readjust lease terms at periodic intervals to reflect "materially changed conditions" as necessary to "adjust each case according to the conditions that are present, having due regard for markets, transportation, and other conditions." *Id.* These limitations do not appear merely in "an early version of the MLA dating back to 1914, six years before the MLA was enacted" as the Secretary contends; they were repeatedly recognized by Congress throughout the six years of sustained debate that preceded enactment of the Mineral Leasing Act and, consequently, restrict the federal government's power to readjust federal coal leases. *See*, *e.g.*, H.R. Rep. No. 17, 64 Cong., 1st Sess. 3, 4 (1916); H.R. Rep. No. 668, 68 Cong. 2d Sess. 3, 4 (1914); Pet. at 4-6. The Court of Appeals' construction of the Mineral Leasing Act tears one of two reciprocal statutory rights from context in contravention of the clear and consistent direction of this Court. Pet. at 13-14.

Fourth, the Secretary mischaracterizes the constitutional issues before the Court. Petitioners' due process claim rests on a foundation that is unprecedented -- in contrast to the typical case where legislation is challenged on the speculative ground that it is unreasonable, here an independent commission appointed by Congress concluded, after months of investigation, weeks of interviewing approximately one hundred witnesses, and days of hearings, that Congress had no rational basis to impose twelve and one-half percent royalties on federal coal lessees. This state of affairs is far different from the Secretary's characterization that a commission merely "disagreed" with Congress. Resp. Br. at 9 n.8. Moreover, it is undisputed that petitioners invested hundreds of millions of dollars in reliance on the indeterminate lease rights the Secretary granted; the suggestion that those investments could not have been "reasonable" because indeterminate lease rights were, in fact, ephemeral all along is unworthy of the Secretary. Resp. Br. at 10.

Fifth, the Secretary's argument on the question whether petitioners' leases were timely readjusted approaches the disingenuous. The Secretary's failure to timely readjust petitioners' federal coal leases cannot be justified on the ground that petitioners invoked mandatory administrative appeal rights to contest decisions they believed to be erroneous. Resp. Br. at 11. Moreover, contrary to the Secretary's suggestions, the two courts of appeals that have addressed the timeliness question have announced differing legal tests that will produce disparate results in hundreds of federal coal lease readjustments. *See, e.g.*, Pet. at 18-19; *Coastal States Energy Co. v. Hodel*, 816 F.2d 502, 505

(1987); *Colowyo Coal Company v. Lujan*, Pet. App. 20a-21a.

CONCLUSION

For the reasons stated in the petition and in this reply, petitioners pray the Court to grant certiorari in this case.

Respectfully submitted,

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